Longendyke v. *Longendyke*, 44 Barb. (N. Y.) 366. The obvious answer is that the breach might never have occurred had an action been imminent. In the face of the words of the statute the decision seems a severe application of the rule that statutes in derogation of the common law are to be strictly construed.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — WHEN RIGHT OF ACTION FOR REVOCATION ACCRUES. — The defendant company wrongfully cancelled a policy of insurance on the life of A. After A's death, three years later, suit was brought on the policy. *Held*, that the action lies. *Baumann* v. *Metropolitan Life Ins. Co.*, 128 N. W. 864 (Wis.).

The confusion in the decisions on the effect of repudiation by the insurer upon the insured's right of action on the policy is illustrated by several cases following a company's attempted reduction in the face of its outstanding policies. Massachusetts, which denies the theory of anticipatory breach of contract, held that no action lay until after the death of the insured. *Porter* v. *American Legion of Honor*, 183 Mass. 326; *Newhall* v. *American Legion of Honor*, 181 Mass. 111. New York, unmindful of the anticipatory breach doctrine there followed, also denied legal relief during the life of the insured. *Langan* v. *American Legion of Honor*, 174 N. Y. 266. An earlier case permitting immediate recovery was overlooked. *Fischer* v. *Hope Mutual Life Ins. Co.*, 69 N. Y. 161. New Jersey, however, held this to be an anticipatory breach and allowed recovery at once. *O'Neill* v. *American Legion of Honor*, 70 N. J. L. 410. An immediate action, founded on an actual and not on an anticipatory breach, should be given. The peculiar nature of life insurance contracts necessitates co-operation on the part of the insurer; a contract by the company to accept premiums is implied in fact in every case. Hence repudiation and refusal of premiums is a present breach, giving rise to an action for damages for the loss of the whole contract and starting the running of the Statute of Limitations. WILLISTON'S WALD'S POLLOCK, CONTRACTS, 362–364.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — LIABILITY OF INITIAL CARRIER. — The Carmack Amendment provides that in interstate shipments the initial carrier shall issue a bill of lading for the goods and "be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass," notwithstanding any stipulation to the contrary, and gives the initial carrier an action of indemnity against the one on whose line the loss occurs. An interstate shipment was made, by the terms of which the receiving railroad, the defendant, was to be liable only for loss upon its own rails. The goods were lost by a connecting carrier. The shipper sued the initial carrier. *Held*, that the act is constitutional and the plaintiff may recover. *Atlantic Coast Line R. Co.* v. *Riverside Mills*, U. S. Sup. Ct., Jan. 3, 1911.

The difficulty of placing the responsibility for the loss and the frequent necessity of suing in a distant jurisdiction put the shipper at a disadvantage and often drive him to accept unfavorable settlements. A remedy is here sought under the Commerce clause. *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1, 196. See 20 HARV. L. REV. 481. The facts of the principal case do not raise, and the court refrains from considering, the difficult question presented by a situation where this statute would seemingly force the first railroad to accept as a potential debtor any connecting line the shipper may designate, without regard to the inclination of the first, or the solvency of the connecting carrier. As a matter of statutory construction, it is at least arguable that this should have been considered. See *The Employers' Liability Cases*, 207 U. S. 463, 501.

INTERSTATE COMMERCE — CONTROL BY STATES — POLICE POWER. — A state statute was construed as prohibiting any limitation of liability for a

telegraph company's negligent failure to deliver telegrams sent to a person in another state. *Held*, that the statute is constitutional. *Western Union Telegraph Co.* v. *Commercial Milling Co.*, 31 Sup. Ct. 59.

Against the validity of this exercise of the state's police power through a statute founded upon the policy of the state to hold telegraph companies to the high standard of care that is desirable in callings quasi-public in nature, it was chiefly urged that the statute interfered with interstate commerce. The court, however, held that no direct restraint ensued and sustained the enactment under the language of a previous case, finding that it may be "fully carried out . . . without in any manner affecting the conduct of the company with regard to the performance of its duties in other states." *Western Union Telegraph Co.* v. *James*, 162 U. S. 650, 660. For a discussion of the principles involved, see 22 HARV. L. REV. 437.

JUDGMENTS — EQUITABLE RELIEF — ENFORCEMENT OF JUDGMENT FOR ADVANCE PAYMENTS ON CONTRACT OF SALE REPUDIATED BY BUYER. — In a contract for the sale of hops, A was to deliver in October, 1906, and B was to make part payments in the preceding April, May, and September, and on delivery. In March, B repudiated the contract. In May, A brought an action for $4000, comprising the first two payments, and final judgment was rendered in his favor in December, 1907. A did not tender delivery of the hops, which, in October, 1906, had a market value in excess of the contract price, but subsequently sold them at a loss. B now asks to have the enforcement of the judgment enjoined. The decree of the trial court refusing the injunction was affirmed by necessity, the court being evenly divided. *Livesley* v. *Krebs Hop Co.*, 112 Pac. 1 (Or.).

Since the market price at the time for delivery was higher than the contract price, if A had sued for a breach of the entire contract, he could have recovered only nominal damages (for the year 1906). *Tufts* v. *Bennett*, 163 Mass. 398; *Jones* v. *Jennings*, 168 Pa. St. 493. In the action for the advance payments, B might have urged that this was A's proper remedy, since B had repudiated the entire contract besides refusing to make the payments in question. *Acme Food Co.* v. *Older*, 64 W. Va. 255. See WILLISTON'S WALD'S POLLOCK, CONTRACTS, 362. But this point, not being taken, was waived. *Krebs Hop Co.* v. *Livesley*, 51 Or. 527. If B had made the advance payments, and A had wrongfully failed to deliver, B could have recovered what he paid. *Cherry Valley Iron Works* v. *Florence Iron River Co.*, 64 Fed. 569. See WILLISTON, SALES, § 600. Similarly if, after recovering judgment for advance payments, A had wrongfully failed to deliver, it is submitted that the enforcement of the judgment should have been enjoined. But the seller is excused from tendering delivery, if, when it is due, the buyer repudiates the contract or refuses to make overdue payments. *Cort* v. *Ambergate, etc. Ry. Co.*, 17 Q. B. 127. Since the litigation was in progress during October, 1906, A was excused from tendering delivery. The result of the principal case, therefore, seems sound in refusing to disturb the judgment.

LEGACIES AND DEVISES — CLASSES OF LEGACIES AND DEVISES — CONDITIONS IN RESTRAINT OF MARRIAGE: WHEN VOID. — A testatrix, having several daughters and one incompetent son, left the son's share to trustees for him for life, and after his death to her "unmarried daughters." Assuming that the beneficiaries were to be determined, not at the death of the testatrix, but at the death of the son, it was contended that the word "unmarried" ought to be stricken out as an illegal condition. *Held*, that the condition was not illegal. *Robinson* v. *Martin*, 200 N. Y. 159.

The Roman law held no donee bound by conditions tending to restrain his marriage. The ecclesiastical courts grafted this principle upon the law of